IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

CRL.A.No. 1718 of 2004()

SC.157/2001 of II ADDL. SESSIONS COURT, TRIVANDRUM
CP.159/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, NEDUMANGAD
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APPELLANT:

SASIDHARAN ASARI, @ VELLI SASI
S/O.SUKUMARAN ASARI,
C.P. TRIVANDRUM 695 012.

BY ADV. SUNNY XAVIER [STATE BRIEF]

RESPONDENTS:

STATE OF KERALA, REP.BY
PUBLIC PROSECUTOR.

BY ADV. PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & V. GIRI, JJ.

Crl. Appeal No. 1718 of 2004

Dated this the 14th day of August, 2007

Judgment

Koshy,J.

Appellant was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/- for offences punishable under section 302 of the Indian Penal Code. He was alleged to have caused death of one Sudhakaran at 6.30 p.m. on 18.11.1999 at a place near the house of the accused at the Panchayath thadam in Kundalamkuzhi in Peringamala village and Sudhakaran succumbed to the injuries at about 8.15 p.m. on the same day. PW1, elder brother of the deceased who was not an eye witness and who came hearing the incident, gave first information statement at 8.30 a.m. on 19.11.1999. PW12 recorded first information statement. PW15 arrested the accused on 25.11.1999. He also seized MO4 lunki and MO5 thorthu (bath towel) worn by the accused as per Ext.P9 mahazar. Alleged weapon MO1 knife used in the commission of the offence was seized by Ext.P7 mahazar. MO1 knife was recovered on the basis of disclosure statement made by the accused which is Ext.P7

(a). PWs 2 to 5 were examined as occurrence witnesses. However, PW2 turned hostile and stated that he has not seen the incident. He also stated that he had no acquaintance with the deceased, but, he knew the accused. He denied the 161 statement as given by him even though he stated that MO1 knife was the knife used by the accused. He also stated the he knew the mother of the deceased and his house. He denied the suggestion that he has turned hostile because accused was a close friend of him.

2. PW3 is an eye witness. He deposed that he saw the incident. He also stated that he saw Sasi, the accused, coming behind Sudhakaran. He was also walking in the same direction. Accused went to his house and came back wearing a lunki and thorthu and he questioned the deceased and deceased pushed him. Again, the accused questioned and, finally, he inflicted incised wounds using MO1 knife. He also deposed that there were disputes between the accused and the deceased regarding the illicit trade of arrack. It is also stated that the accused was dealing with illicit arrack. PW4, even though declared hostile, has clearly stated that he saw the accused inflicting injuries with MO1 knife. There was

difference only regarding the position of the deceased. But, his evidence also would show that accused caused several injuries by MO1 knife. PW3 as well as PW4 have also identified MOs 4 and 5 as lunki and thorthu worn by the deceased at the time of incident and MO1 was the weapon. PW5 stated that while he was standing there, the accused told him that he has killed the deceased. Immediately, he rushed to the place and saw the injured/deceased. The trial court rightly did not believe him as PWs 3 and 4 did not say his presence at the time of incident. That itself is not enough to disbelieve him. Only after hearing the extra-judicial confession made by the accused, he rushed to the place of occurrence. Of course, PW3 stated that he was one of the person who has taken the deceased to the hospital.

3. Ext.P11 Postmortem certificate issued by PW14 doctor shows that the following injuries were caused:

> "1. Incised penetrating wound 1.4 x 0.8 c.m. oblique on the left side of front of chest, its lower inner round end 1 c.m. outer to midline 12 c.m. below the top of breast bone. The upper outer and sharply cut. The chest cavity was seen penetrated

by cutting the sternum at the level of attachment of 4th rib and the 4th intercostal muscle, pierced the pericardium and transfixed the heart, wound of entry through right ventricle, 7 c.m. above the apex of heart and punctured the back wall of left ventricle for a depth of 0.8 c.m. The wound was directed downwards, backwards and to the right for a total minimum depth and to the right for a total minimum depth of 4.6 c.m.

2. Incised penetrating wound 2 x 0.8 c.m. obliquely placed on the left side of chest, its upper front rounded end 14 c.m. outer to midline and 18 c.m. below the front fold of armpit. The lower back end sharply cut. The chest cavity was seen penetrated through the 6th intercostal space transfixing the lower lobe of left lung, pierced the pericardium and punctured the left ventricle 5.5 c.m. above apex. The wound was directed upwards and to the right for a total minimum depth of 6 c.m.

Pericardial cavity contained 35 gms. Of clotted blood and left chest cavity contained 600 gms. Of clot and 650 ml. Of fluid blood.

3. Incised wound 1.4 x 0.6 x 0.6 c.m., oblique on the left side of chest, 9.5 c.m. outer to midline and 16.5 c.m. below the

top of shoulder in the 8 o'clock position of nipple.

4. Incised wound 1.5 x 0.6 x 1 cm. Obliquely placed on the left buttock, its upper outer end 17 c.m. outer to midline and 3 c.m. below the top of hip bone.

5. Multiple small abrasions over an area 4 x 2 c.m. on the inner aspect of left knee.

6. Multiple small abrasions over an area 10 x 0.5 c.m. on the outer aspect of left leg, 6 c.m. below knee.

7. Abrasion 5 x 0.5 c.m. on the outer aspect of left knee.

8. Abrasion 0.8 x 0.5 c.m. on the left side of back of chest 9 c.m. outer to midline and 9.5 c. m. below the top of shoulder.

9. Abrasion 4 x 1.5 c.m. horizontal on the right side of back 1.5 c.m. outer to midline and 9 c.m. below the root of neck.

10. Superficial incised wound 0.8 x 0.3 c.m. skin deep on the back of left arm, 28 c.m. above elbow."

PW14 deposed that death was due to the penetrating injury Nos.1 and 2 sustained to the chest. He also stated that injury Nos.1 to 4 and 10 can be caused with MO1 knife, that injury Nos.1 and 2 are independently sufficient in

the ordinary course of nature to cause death, that injury Nos.5 to 7 can be caused if the victim suddenly kneels down and falls back, that injury Nos.8 and 9 can be caused if the victim falls back in the course of falling back and if the respective parts of the body comes into contact with hard or rough surface or object. He also stated that as per the Forensic Science Laboratory report, blood of the deceased contained 81 mg. of ethyl alcohol per 100 ml. of blood. He also deposed in cross-examination that injury Nos.1 to 4 and injury No.10 could be caused by independent inflictions. He further stated that from the quantity of alcohol present in the blood, it cannot be stated that the deceased was under the influence of alcohol. Ext.P14 FSL report shows that the lunki and thorthu (MOs 4 and 5) used by the accused at the time of incident was blood stained. MO1 knife was recovered as per Ext.P7 mahazar on the basis of confession made by the accused, extract of which was marked as Ext.P7 (a). It is argued by the counsel for the appellant that motive was not proved. It has been repeatedly held by the Apex Court that when there are clear and cogent evidence adduced by eye witnesses, motive is not important and proof of motive may be

different. However, in this case, PW1, who gave first information statement, as well as PW3 stated that there was motive and there was enmity between the deceased and accused regarding sale of illicit arrack. PW3 also stated that the accused went to the house and rushed back wearing thorthu with the intention to kill the deceased. Evidence of PWs 3 and 4, eye witnesses, clearly prove that the incident occurred as alleged by the prosecution. Evidence of PWs 3 and 4 as evidenced by the recovery of MO1 as well as MOs 4 and 5, the dress, worn by the accused was blood stained. In 313 statement, the accused has no explanation regarding blood stains on the dress. It is further argued that since the deceased consumed alcohol, deceased might have started the incident. Merely because the deceased has consumed alcohol, there is no basis to say that he incited the accused as he can be killed. Many injuries were inflicted and murder is justified. Even if the injury occurred in a sudden fight, the number of injuries would show that the deceased was murdered in a cruel manner and the accused is not entitled to the benefit of Exemption 4 of section 300 of the Indian Penal Code. In this case, there is clear and cogent evidence that the accused has

caused the injuries in the ordinary course of nature and are sufficient to cause death.

In the above circumstances, we see no ground to interfere in the conviction and sentenced passed against the accused by the trial court and the appeal is dismissed.

J.B.KOSHY
JUDGE

V. GIRI
JUDGE

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J.B. KOSHY AND
V.GIRI,JJ.

Crl.Appeal NO.1718/2004

Judgment

Dated:14th AUGUST, 2007